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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re:

NEXPRISE, INC., a Delaware corporation,

Debtor and Debtor in Possession.

Tax ID # 77-0465496

Case No. 11-00742-LA11

Chapter 11

Motion For Orders (1) Approving Bidding Procedures And Protections And (2) Approving Sale Transaction; Memorandum Of Points and Authorities

Date: February 24, 2011
Time: 2:30 p.m.
Ctrm: Department 2, Room 118
325 W. F Street
San Diego, CA 92101
Judge: Hon. Louise D. Adler

NexPrise, Inc. ("NexPrise" or "Debtor"), debtor and debtor in possession in the above-captioned case, hereby moves (the "Motion") this Court for entry of two orders:

(A) an order ("Bidding Procedures Order"):

(i) establishing bidding procedures and requirements ("Bidding Procedures") for interested parties to submit competing proposals in connection with the Debtor's restructuring efforts, including, but not limited to, the purchase of the assets of the Debtor's estate;

(ii) approving reimbursement of a proposed purchaser's legal expenses and other bidding protections ("Bidding Protections"); and

(iii) scheduling a hearing to consider approval of the proposed transaction that is accepted by the Debtor; and

(B) an order (the "Approval Order"):

(i) approving the proposed transaction accepted by the Debtor, authorizing the Debtor to implement the transaction, and providing for related relief; and

(ii) the assumption by the Debtor and, if applicable, assignment to the winning bidder of designated executory contracts and unexpired leases.

This Motion is based on the Declarations of John Lynch and Kurt Ramlo filed concurrently herewith, on the attached Memorandum of Points and Authorities, on the other pleadings on file in this case, and on the evidence and arguments of counsel to be submitted at the hearing hereon.

WHEREFORE, the Debtor respectfully requests that the Court enter the Bidding Procedures Order, a form of which is attached hereto as **Exhibit A,** and the Approval Order, a form of which is attached hereto as **Exhibit B,** and grant such other relief as is just and proper.

Dated: January 19, 2011

DLA PIPER LLP (US)

By _/s/ Kurt Ramlo
KURT RAMLO
Proposed Attorneys for NexPrise, Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

The Debtor filed this bankruptcy case to preserve the going-concern value of its business while it pursues the sale of substantially all of its assets under section 363 of title 11 of the Bankruptcy Code. After years of implementing and considering numerous options to restructure its business, the Debtor decided that a sale of substantially all of its assets is in the best interests of its stakeholders. After fully marketing those assets, the Debtor entered into an asset purchase agreement with Trubiquity, Inc. for approximately $2.0 million. Pursuant to this Motion, this agreement will be subject to overbid and bankruptcy court approval, ensuring that the Debtor's estate receives maximum value for its assets.

The auction procedure described in this Motion contemplates the closing of a sale of the Debtor's assets to a successful bidder within approximately 70 days of the petition date. Keeping to this timeline is critical in order for the Debtor to be able to successfully consummate a sale and maximize value for its stakeholders. The Debtor has limited cash flow and will soon be unable to meet its operating obligations. The Debtor cannot afford an extended wait before consummation of a sale.

Consistent with this, the bidding procedures described below include a process by which entities who are interested in purchasing the Debtor's assets can submit indications of interest. If the Debtor does not receive any indications of interest by the applicable deadline, the bidding procedures enable the Debtor to proceed to a hearing on the approval of the sale to Trubiquity, Inc. This will ensure that a sale is closed as quickly as possible in the event there is no interest in purchasing the Debtor's assets from other entities.

FACTS

A description of the Debtor and the events resulting in its chapter 11 case and the facts supporting this Motion are contained in the declaration of John Lynch filed concurrently herewith.

On January 18, 2011 (the "Petition Date"), the Debtor commenced this case by filing a voluntary chapter 11 petition with this Court.

The Debtor continues to operate its businesses as debtor in possession pursuant to sections 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code").

This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b).

The statutory predicate for the relief requested herein is sections 105, 363 and 365 of the Bankruptcy Code.

BACKGROUND

A. The Debtor's Business

NexPrise is the original innovator of Enterprise Content Management ("ECM") solutions such as WebSpace and InfoPrise. WebSpace is part of the cloud model of computing, consisting of internet-based computing whereby shared resources, software and information are provided to computers and other devices on–demand. The NexPrise ECM platform was originally conceived to support secure multi-organizational collaboration in the aerospace and defense industry. Since its founding, NexPrise has developed a reputation as a global process and document management company that delivers flexible solutions with absolute immediacy.

NexPrise operates out of its headquarters located in Carlsbad, California and employs nine people. NexPrise has over 50 customers and its product usage has spread to over 25,000 users across multiple industries including aerospace, defense, automotive, high-tech, pharmaceutical, and medical device companies.

B. Debt Structure

The Debtor currently has no secured debt obligations. As of the Petition Date, the Debtor has approximately $6.8 million of priority and general unsecured obligations that are held by approximately 70 creditors, including employees. The Debtor's largest unsecured creditors are Timeline Venture Investors I, LLP ("Timeline Venture") and Sirius Industries, LLC ("Sirius"). Timeline holds an unpaid note with balance of approximately $1.2 million. The Debtor's obligations under the note have been the subject of a forbearance agreement with Timeline, but the Debtor is no longer current on its obligations to Timeline under the note as modified by the forbearance agreement. The Debtor's second largest unsecured creditor is Sirius, which holds a note with an approximately $630,000 balance. The Debtor remained current on its interest payment obligations under this note through October 2010. The Debtor also has approximately $4.8 million in debt remaining from an issuance of subordinated bonds (the "Bond Issuance").

C. Events Leading to Chapter 11 Filing and Entry Into the APA

The Debtor's revenue has been relatively flat from the years 2005 through 2009, running at an average of approximately $2.4 million per year. While the Debtor believes that it would have steadily increasing revenue over the next two years, the Debtor has not been servicing its funded debt from its Bond Issuance since 2005 and despite the Debtor's historical and projected revenue, the Debtor has limited cash flow and would soon be unable to meet some of its other obligations.[1] Over the past six years, the Debtor has attempted to recapitalize, reorganize, or restructure so that it could acquire new capital to grow its business in light of its projected increases in revenues. Through proposals such as conversion and buy-back offers, the Debtor was able to reduce the original $250 million debt from the Bond Issuance to the approximate $4.8 million amount that remains outstanding today. The holders of the remaining $4.8 million have not responded to the Debtor's proposals to restructure their debt. The Debtor believes these holders are small stakeholders who have written off or abandoned their investment and thus are not easily locatable.

Prior to commencing this chapter 11 case, the Debtor, in consultation with its key stakeholders, pursued a range of options to address its concerns about its ability to service its debt going forward. In addition to continuing its restructuring efforts described above, the Debtor, among other things, explored a restructuring with its largest creditors, Timeline Ventures and Sirius Industries. However, those efforts were also unsuccessful. The Debtor has also attempted to raise capital from other sources, including third party lenders and other investors, but those efforts were also unsuccessful. After exploring the strategic alternatives available, the

[1] Note: the bond debt has not been paid since 2005; Sirius and Timeline debts have been paid more recently.

Debtor determined that the best way to maximize the value of its assets for the benefit of its stakeholders is to commence a chapter 11 case and seek a sale of substantially all of its assets.

In early August 2010 (after consultation with Timeline Ventures and Sirius Industries), the Debtor began an extensive marketing and sale process, aggressively canvassing the marketplace to locate potential purchasers. The Debtor interviewed several investment banks to assist in this process, but determined that the cost of marketing the company through an investment bank would not be nearly as cost efficient as having the company market its assets on its own. Thus, the Debtor chose to market its assets on its own with the fallback of using an investment bank if its marketing efforts were unsuccessful. During August and September 2010, the Debtor utilized analyst reports from industry research organizations such as Gartner and Forrester Research, along with its own knowledge of companies in the industry to identify potential purchasers whose businesses were compatible with that of NexPrise and who were in a financial position to acquire NexPrise's assets.

Through this process, NexPrise identified 50 potential purchasers and contacted those entities through emails and phone calls. Among other things, NexPrise provided these entities with details regarding the company's products, customers, users, revenue, and employees. Some of the solicited entities asked NexPrise for additional information and NexPrise continued a dialogue with those entities. Additionally, NexPrise received a referral from one of the solicited entities to a company NexPrise had not originally targeted, Trubiquity, Inc (the "Stalking Horse Bidder"). Follow-up communications with the Stalking Horse Bidder and other entities led to the Debtor giving presentations to five entities that had expressed an interest in acquiring NexPrise's assets. After these presentations, three of the five entities asked NexPrise for detailed face-to-face technical demonstrations. At the conclusion of the technical demonstrations, only the Stalking Horse Bidder chose to proceed with an offer to purchase NexPrise's assets.

The Debtor, in consultation with its advisors, engaged in arm's-length, good faith negotiations with the Stalking Horse Bidder. Following extensive negotiations, on November 4, 2010, the Debtor signed a letter of intent (the "Letter of Intent") with the Stalking Horse Bidder expressing the intent to negotiate an asset purchase agreement. On January17, 2011, the Debtor and the Stalking Horse Bidder, after negotiations involving their respective counsel, entered into an asset purchase agreement (the "APA") with respect to the sale and purchase of substantially all of the Debtor's assets for approximately $2.0 million.

Accordingly, with stalking horse bidding floor and the APA in place, the Debtor now is seeking to effectuate the sale to the Stalking Horse Bidder, subject to a competitive bidding process that is consistent with both the timing of this chapter 11 case and the Debtor's fiduciary duties to maximize value for its estate, stakeholders and all parties in interest.

RELIEF REQUESTED

By this Motion, the Debtor seeks entry of (1) a Bidding Procedures Order (i) establishing bidding procedures and requirements for interested parties to submit competing proposals in connection with the Debtor's restructuring efforts, including, but not limited to, the purchase of the assets of the Debtor's estate; (ii) approving reimbursement of a proposed purchaser's legal expenses and other bidding protections, and (iii) scheduling a hearing to consider approval of the proposed transaction accepted by the Debtor (the "Approval Hearing"); and (2) an Approval Order (i) approving the proposed transaction accepted by the Debtor, authorizing the Debtor to implement the transaction, and providing for related relief; and (ii) approving the assumption by the Debtor and, if applicable, assignment to the winning bidder of certain designated executory contracts and unexpired leases.

A. APA

As set forth above, the Debtor believes that it is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest to have a competitive bidding process to select a transaction partner and proposal that will maximize value to the Debtor's estate. Under the APA, the Stalking Horse Bidder's commitment to consummate the sale is subject to several conditions. If these conditions are met, the Stalking Horse Bidder's offer will serve as the initial bid under the bidding procedures described below pursuant to the terms of the APA.

The following is a brief summary of certain of the key provisions of the terms of the APA:

1 **Purchased Assets.** The form of the acquisition would be a purchase of the operating assets of the Debtor, including but not limited to: (i) third-party trade accounts receivables; (ii) computer software and other intellectual property; (iii) prepaid expenses to the extent usable by the Stalking Horse Bidder; (iv) contract rights under contracts disclosed to and approved by Stalking Horse Bidder; (v) all of the Debtor's rights, claims, credits, causes of action or rights of set off against third parties, including rights with respect to certain avoidance actions under the Bankruptcy Code and certain causes of action under applicable state law; and (vi) records, customer relationships, goodwill and other intangible property (the "Purchased Assets"). The Purchased Assets would not include cash or cash equivalents.

2 **Consideration.** Stalking Horse Bidder will pay an aggregate price of $2.0 million USD[2] in cash (the "Purchase Price") in exchange for 100.0% of the Purchased Assets.

3 **Assumption of Liabilities.** Stalking Horse Bidder would assume only certain liabilities specifically described in the APA (the "Assumed Liabilities").[3] Assumed Liabilities would not include funded debt nor tax liabilities.

4 **Assumption of Contracts**. Stalking Horse Bidder may choose to assume any of the Debtor's rights under its executory contracts.

5 **Timing**. Debtor and the Stalking Horse Bidder must use all reasonable efforts to close the transaction as promptly as reasonably possible after Court approval of the transaction.

6 **Form of Transaction**. An asset sale under section 363 of the Bankruptcy Code.

B. Bidding Procedures

In an effort to ensure that maximum value is obtained, the consummation of a transaction is subject to higher or better offers. In order to properly value these bids, the Debtor requests that the Court approve the following uniform bidding procedures (the "Bidding Procedures"):

Initial Indications of Interest

Within two (2) business days after entry of the Bidding Procedures Order, the Debtor intends to serve a "Notice of Opportunity to Submit Bids, Sale Hearing Dates, and Objection Deadlines" (the "Procedures Notice"), a copy of which is attached hereto as **Exhibit C**, and the Bidding Procedures Order on (a) any Potential Bidders (defined below) identified by the Debtor or who has expressed an interest in purchasing all or any portion of the Purchased Assets or consummating a change of control transaction within the last six months, (b) the Debtor' twenty largest unsecured creditors and any official committee of unsecured creditors appointed in these cases, (c) any party, which, to the best of the Debtor' knowledge, asserts a lien, mortgage, or security interest in any of the Purchased Assets, (d) any entity that has entered a notice of appearance in these cases, (e) the Office of the United States Trustee, (f) the local insolvency section of the Internal Revenue Service, and (g) the Securities and Exchange Commission (the "Notice Parties").

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[2] The $2.0 million purchase price may be adjusted upward or downward by certain amounts relating to the amount of deferred revenue above or below a certain normalized amount as well as by certain cure costs. See APA § 3.2.

[3] See APA § 3.2.

To participate in the bidding process or otherwise be considered for any purpose hereunder, an entity (other than the Stalking Horse Bidder) interested in purchasing the Purchased Assets (a "Potential Bidder") must, on or before **5:00 p.m. prevailing Pacific Time on March 4, 2011** (the "Indication of Interest Deadline"), deliver (unless previously delivered) to each of (i) NexPrise, Inc., 5963 La Place Ct., Suite 302, Carlsbad, California, Attn.: John Lynch and (ii) counsel to the Debtor: DLA Piper LLP (US), 2002 University Ave., East Palo Alto, California 94303, Attn.: Eric Wang; and DLA Piper LLP (US), 550 South Hope St., Suite 2300, Los Angeles, California 900071-2678, Attn.: Bertrand Pan the following documents (the "Preliminary Bid Documents") so that the Preliminary Bid Documents are received by the Indication of Interest Deadline:

1 **Nondisclosure**. An executed nondisclosure agreement (the "Nondisclosure Agreement"), substantially in the form attached hereto as **Exhibit D** and containing terms in the aggregate no less favorable to the Company in any material respect than those contained in the confidentiality agreement by and among the Stalking Horse Bidder and the Debtor;

2 **Indication of Interest**. A non-binding indication of interest with respect to the purchase of all of the Purchased Assets and the assumption of all of the Assumed Liabilities; and.

3 **Proof of Financial Capacity**. Preliminary proof by the Potential Bidder of its financial capacity to close a proposed transaction, including, without limitation, the financial wherewithal to pay a minimum of $2,400,000 in cash to acquire the Purchased Assets, the adequacy of which the Debtor will determine in consultation with its advisors.

Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents (each, an "Pre-Qualified Bidder," and their bid, a "Pre-Qualified Bid") may submit bids to purchase all of the Purchased Assets and assume all of the Assumed Liabilities.

Within two (2) business days of the Indication of Interest Deadline, the Debtor shall determine and notify each of the Potential Bidders whether it has been deemed a Pre-Qualified Bidder.

The Debtor shall promptly notify the Stalking Horse Bidder after determining that any Potential Bidder is a Pre-Qualified Bidder and shall provide copies of the documents associated with the Pre-Qualified Bid

Additional Due Diligence Access to Pre-Qualified Bidders

To the extent the Debtor receives one or more Pre-Qualified Bids prior to the Initial Indication of Interest Deadline, the Debtor shall provide such Pre-Qualified Bidders access to additional reasonable due diligence information, as requested. Such diligence information shall be commensurate with the due diligence information previously given to the Stalking Horse Bidder. To the extent the Debtor provides any information to any Pre-Qualified Bidder that they had not previously provided to the Stalking Horse Bidder, the Debtor shall promptly provide such information to the Stalking Horse Bidder. The due diligence period will end on the Bid Deadline (as defined herein).

Bid Requirements

To participate in the Solicitation Conference (defined below), a Pre-Qualified Bidder must deliver an irrevocable offer so that it is received by the Debtor by **5:00 p.m. prevailing Pacific Time on March 18, 2011 (the "Bid Deadline")** at the following addresses:

Debtor	Counsel to Debtor
NexPrise, Inc. 5963 La Place Ct., Suite 302 Carlsbad, California 92008 Attn.: John Lynch	DLA Piper LLP (US) 2000 University Ave. East Palo Alto, California 94303 Attn.: Eric Wang DLA Piper LLP (US) 550 South Hope St., Suite 2300 Los Angeles, California 90071-2678 Attn.: Bertrand Pan

Each irrevocable offer must:

a. be in writing;

b. at a minimum, exceed the aggregate sum of the following: (i) the Cash Purchase Price ($2,000,000); (ii) the Assumed Liabilities; (iii) the Expense Reimbursement Amount (defined below) in the amount up to $300,000; and (iv) the minimum bid increment of $100,000 (such aggregate sum, the "Minimum Initial Bid Increment") (all of which must be in cash);

c. constitute a good-faith offer to purchase all of the Purchased Assets and to assume all of the Assumed Liabilities;

d. be accompanied by a clean and a duly executed copy of the APA and the documents set forth as schedules and exhibits thereto, along with copies that are marked to reflect the amendments and modifications from the APA executed with the Stalking Horse Bidder, which may not be materially more burdensome to the Debtor or inconsistent with these Bidding Procedures, including with respect to the scope of the Purchased Assets and Assumed Liabilities (the "Overbid APA");

e. identify with particularity each and every condition to closing;

f. identify with particularity the executory contracts and unexpired leases for which assumption and assignment is required;

g. not be conditioned on any contingency, including, without limitation, on obtaining any of the following: (i) financing, (ii) shareholder, board of director or other approval, (iii) regulatory contingencies of any kind and/or (iv) the outcome or completion of a due diligence review by the Potential Bidder;

h. provide the Debtor, on or before the Bid Deadline, with sufficient and adequate information to demonstrate, to the satisfaction of the Company, that such Potential Bidder has the financial wherewithal and ability to consummate the acquisition of the Purchased Assets and the assumption of the Assumed Liabilities;

i. fully disclose the identity of each entity that will be bidding for or purchasing all of the Purchased Assets and assuming all of the Assumed Liabilities or otherwise participating in connection with such bid, and the complete terms of any such participation, along with sufficient evidence that the Pre-Qualified Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties;

j. be accompanied, on or before the Bid Deadline, by a cash deposit equal to $480,000, by wire transfer of immediately available funds to an account or accounts designated by the Debtor (the "Deposit");

k. state that the offering party or parties consents to the jurisdiction of the Court; and

l. (other than the Stalking Horse Bidder) not request or entitle the Potential Bidder to any transaction or break-up fee, expense reimbursement, termination or similar type of fee or payment; and

m. include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Purchased Assets, the financial performance of the Purchased Assets or the physical condition of the Purchased Assets, or the completeness of any information provided in connection therewith or the Solicitation Conference, except as expressly stated in these Bidding Procedures or the Overbid APA.

Bids that the Debtor and their advisors determine fulfill all of the preceding requirements shall be deemed to be "Qualified Bids," and those parties submitting Qualified Bids shall be deemed to be "Qualified Bidders." Any bid that is not deemed a Qualified Bid shall not be considered further by the Debtor.

The Stalking Horse Bidder shall at all times be deemed to be a Qualified Bidder, provided that any additional bids timely submitted by the Stalking Horse Bidder are generally consistent with the terms of the APA.

Within two days after the Bid Deadline, the Debtor shall determine which Pre-Qualified Bidders have submitted Qualified Bids and shall notify the Stalking Horse Bidder and the Pre-Qualified Bidders as to whether any Qualified Bids have been received. The Debtor shall provide the Stalking Horse Bidder with copies of all Qualified Bids.

Solicitation Conference

If no Qualified Bids are received by the Bid Deadline, then the Solicitation Conference will not occur, the APA will be deemed the Winning Bid (as defined herein) and the Stalking Horse Bidder the Winning Bidder (as defined herein) and, the Debtor will pursue entry of the Approval Order approving the APA and authorizing the sale of the Purchased Assets and the transfer of the Assumed Liabilities to the Stalking Horse Bidder.

If one or more Qualified Bids are received by the Bid Deadline, then the Debtor shall conduct a solicitation conference (the "Solicitation Conference") at which the Stalking Horse Bidder and the other Qualified Bidders will have the opportunity to submit their final and best bids as set forth below. The Solicitation Conference shall commence on March 22, 2011 at the offices of DLA Piper LLP (US), 550 South Hope Street, Suite 2300, Los Angeles, CA 90071, or such later time or other place as the Debtor, the Stalking Horse Bidder, and the Qualified Bidders shall agree.

Prior to the Solicitation Conference, the Debtor shall identify the Qualified Bid that is, in the Debtor's judgment, the highest or otherwise best bid (the "Starting Bid"). No later than three (3) calendar days prior to the date of the Solicitation Conference, the Debtor shall notify the Stalking Horse Bidder as to which Qualified Bid is the Starting Bid. The Debtor shall thereafter distribute copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid.

The Solicitation Conference will be conducted in accordance with the following procedures (the "Solicitation Conference Procedures"):

a. only Qualified Bidders and their legal and financial advisors, including the Stalking Horse Bidder, shall be entitled to bid at the Solicitation Conference;

b. the Qualified Bidders, including the Stalking Horse Bidder, shall appear in person or through duly-authorized representatives at the Solicitation Conference;

c. only such authorized representatives of each of the Qualified Bidders, the Stalking Horse Bidder, the Debtor, their respective advisors, and the advisors to the Creditors' Committee (if any) shall be permitted to attend the Solicitation Conference;

d. bidding at the Solicitation Conference shall begin at the Starting Bid;

e. subsequent bids at the Solicitation Conference, including any bids by the Stalking Horse Bidder, shall be made in minimum increments of $100,000;

f. the Stalking Horse Bidder shall receive a credit equal to the Expense Reimbursement Amount (e.g., $300,000) in each round of bidding at the Solicitation Conference;

g. each Qualified Bidder will be informed of the terms of the previous bids;

h. the bidding will be stenographically recorded to ensure an accurate record of the bidding at the Solicitation Conference;

i. each Qualified Bidder will be required to confirm on the record of the Solicitation Conference that it has not engaged in any collusion with respect to the bidding or the Sale;

j. absent irregularities in the conduct of the Solicitation Conference, the Court will not consider improved bids made by Qualified Bidders after the Solicitation Conference is closed; and

k. the Solicitation Conference shall be governed by such other Solicitation Conference Procedures as may be announced by the Debtor, after consultation with their advisors as well as the advisors to the Creditors' Committee (if any), from time to time on the record at the Solicitation Conference; provided, that any such other Solicitation Conference Procedures shall not be inconsistent with any order of the Court.

Acceptance of the Winning Bid

Upon the conclusion of the Solicitation Conference (if such Solicitation Conference is conducted), the Debtor, in the exercise of its reasonable, good-faith business judgment, shall identify the highest or otherwise best bid (the "Winning Bid"). The Qualified Bidder having submitted the Winning Bid will be deemed the "Winning Bidder" and the next highest or otherwise best bid, if any, the "Alternative Bid." The Winning Bidder and the Debtor shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms upon which such Winning Bid was made. If the Winning Bidder is not ready, willing, and able to consummate the proposed transaction in accordance with the Winning Bid within five (5) calendar days after entry of an order approving consummation of the transaction (the "Closing Date"), unless the Debtor in its sole discretion extends the Closing Date in writing, without penalty of any kind whatsoever to the

Debtor, (a) the Debtor's acceptance of that offer will be automatically revoked, (b) the Winning Bidder shall forfeit its deposit and the Debtor shall reserve its rights to seek any additional damages permitted under law against such offeror, and (c) the Alternative Bid shall become the Winning Bid.

Assumption of Contracts and Leases

On or before February 8, 2011, the Debtor must serve on all non-debtor parties to executory contracts and unexpired leases to be assumed, and if applicable, assigned in connection with the Winning Bid (the "Assumed Contracts") a notice (the "Cure Notice"), which among other things, will identify the contract or lease as an Assumed Contract and specify the cure amounts necessary to assume the Assumed Contract (the "Cure Amount"). The form of Cure Notice is attached hereto as **Exhibit E**.

The non-debtor party to the Assumed Contract will have until February 25, 2011 (the "Cure Notice Objection Deadline") to object to the assumption and assignment of its respective Assumed Contract or the proposed Cure Amount. Objections must (a) be in writing, (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court, (c) set forth the names of the objector, the nature, and amount of any claim or interest alleged by the objector against the Debtor's estate or properties, (d) state with particularity the legal and factual basis for the objection, and (e) be filed with the Clerk of the Bankruptcy Court with a copy delivered to Chambers and a copy served upon DLA Piper LLP (US), 550 South Hope Street, Suite 2300, Los Angeles, CA 90071, Attn: Bertrand Pan fax: (213) 330-7701; such that all objections are received and filed by the Cure Notice Objection Deadline. If no objection is timely received, the Cure Amount set forth in the Debtor's Cure Notice is controlling, notwithstanding anything to the contrary in the Assumed Contract or any other document, and the non-debtor party to the Assumed Contract is forever barred from asserting any other claims against the Debtor, the assignee of the Assumed Contract, or the property of either of them, related to the Cure Amount or the requirements to assume and assign the Assumed Contract and the non-objecting party will be deemed to consent to the assumption and assignment of the Assumed Contract.

Approval Hearing

The Debtor requests that the Court tentatively schedule two alternative hearing dates for the Approval Hearing:

1. If the Debtor determines after the Initial Indication of Interest Deadline that no Pre-Qualified Bids have been received, the Court shall consider approval of the APA and related documents at the Approval Hearing, scheduled to take place on or about March 11, 2011.

2. If the Debtor receives at least one Pre-Qualified Bid, the Court shall consider approval of the sale of all of the Purchased Assets and the transfer of all of the Assumed Liabilities to the Winning Bidder, or to approve the APA if no Solicitation Conference is held, at the Approval Hearing, scheduled to take place on or about March 31, 2011.

The Debtor will file with the Court and serve on the Notice Parties at least seven (7) days prior to the Approval Hearing, a Notice of Approval Hearing which identifies the Winning Bid. The form of the Notice of Approval Hearing is attached hereto as **Exhibit F**. The Approval Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjourned date at the hearing.

Objections, if any, to the Debtor's acceptance of the Winning Bid and the transaction contemplated thereby, including the sale of the Purchased Assets or the assumption and, if applicable, the assignment of the Assumed Contracts to the Winning Bidder must (a) be in writing, (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court, (c) set forth the names of the objector, the nature, and amount of any claim or interest alleged by the claimant against the Debtor's estate or properties, (d) state with particularity the legal and factual basis for the objection, and (e) be filed with the Clerk of the

Bankruptcy Court with a copy delivered to Chambers and a copy served upon DLA Piper LLP (US), 550 South Hope Street, Suite 2300, Los Angeles, CA 90071, Attn: Bertrand Pan fax: (213) 330-7701; such that all objections are received and filed not later than 5:00 p.m. (Prevailing Pacific Time) on the date that is three (3) business days before the Approval Hearing (the "Objection Deadline").

Reimbursement of Expenses

To the extent required by section 4.7 of the APA, if the APA is terminated, the Debtor shall be obligated to pay to the Stalking Horse Bidder, by wire transfer in immediately available funds to an account designated by the Stalking Horse Bidder, all amounts due to the Stalking Horse Bidder pursuant to the APA, including, without limitation, its reasonable out-of-pocket expenses up to $300,000 (the "Expense Reimbursement Amount") within five (5) business days of receipt of a notice of termination of the APA.

Return of the Deposit

The Deposit of the Winning Bidder shall, upon consummation of the purchase of all of the Purchased Assets and transfer of all of the Assumed Liabilities, be credited to the purchase price paid for all of the Purchased Assets and all of the Assumed Liabilities. If the Winning Bidder fails to consummate the purchase of all of the Purchased Assets and the assumption of all of the Assumed Liabilities due to a breach by the Winning Bidder, then the Deposit shall be forfeited to, and retained irrevocably by, the Debtor.

The Deposit of any unsuccessful Qualified Bidders (except for the Stalking Horse Bidder) will be returned within fourteen (14) days after the entry of the Approval Order by the Bankruptcy Court or upon the permanent withdrawal of the proposed Sale of all of the Purchased Assets and all of the Assumed Liabilities. The Deposit of the Stalking Horse Bidder shall be returned in accordance with the terms of the APA.

Additional Contracts or Leases to Be Assumed and Assigned Before Closing

The Winning Bidder may supplement its list of Assumed Contracts by providing the Debtor with such supplement before 5:30 p.m. Prevailing Pacific Time on the date that is two business days before the applicable Approval Hearing. To the extent that the Winning Bidder identifies additional contracts or leases to be assumed after passing of the time for service of the Cure Notice described in the second paragraph of the section entitled "Assumption of Contracts and Leases" above, the Debtor will prepare an amendment to the Cure Notice (the "Amended Cure Notice") identifying the additional contracts or leases to be assumed ("Additional Assumed Contracts") and the proposed Cure Amounts for the Additional Assumed Contracts. The Debtor will serve the Amended Cure Notice on the non-debtor parties to the Additional Assumed Contracts.

The non-debtor party to the Additional Assumed Contract will have fourteen (14) days after service of the Amended Cure Notice to object to the assumption and assignment of its respective Additional Assumed Contract or the proposed Cure Amount. Objections must (a) be in writing, (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court, (c) set forth the names of the objector, the nature, and amount of any claim or interest alleged by the objector against the Debtor's estate or properties, (d) state with particularity the legal and factual basis for the objection, and (e) be filed with the Clerk of the Bankruptcy Court with a copy delivered to Chambers and a copy served upon DLA Piper LLP (US), 550 South Hope Street, Suite 2300, Los Angeles, CA 90071, Attn: Bertrand Pan fax: (213) 330-7701 so that they are filed and received by 5:00 p.m. prevailing Pacific Time on the date that is seven days after service of the Amended Cure Notice. If no objection is timely received, the Cure Amount set forth in the Amended Cure Notice is controlling, notwithstanding anything to the contrary in the Additional Assumed Contract or any other document, and the non-debtor party to the Additional Assumed Contract is forever barred from asserting any other claims against the Debtor, the assignee of the Additional Assumed Contract, or the property of either of them, related to the Cure Amount or the requirements to assume and assign the Additional Assumed Contract and the non-objecting party will be deemed to consent to the assumption and assignment of the Additional Assumed Contract. If the non-debtor party to an Additional Assumed Contract timely objects to the Amended Cure Notice, the Debtor will notice the matter for hearing.

APPLICABLE AUTHORITY

A. Bidding Procedures and Bid Protections

A prospective purchaser of assets from a chapter 11 debtor may be reluctant to make an offer, because it knows that even if it reaches agreement with the debtor, its offer is subject to overbid. Pre-approved bidding procedures and break-up fees address these concerns, by assuring initial bidders that any auction procedure will be reasonable and that, if they are outbid, they will at least recover their expenses and be compensated for opportunity costs.

Bidding incentives encourage potential purchasers to invest the requisite time, money, and effort to negotiate with a debtor and perform the necessary due diligence attendant to the acquisition of a debtor's assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding procedures and protections similar to the Bidding Procedures and Bid Protections under the business judgment rule. See, e.g., In re 995 Fifth Ave. Associates, L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (bidding incentives may "be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (citation omitted); In re Marrose Corp., Nos. 89 B 12171-12179 (CB), 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) ("[bidding incentives] are meant to compensate the potential acquirer who serves as a catalyst or stalking horse which attracts more favorable offers"); see also In re Integrated Resources, 147 B.R. 650, 657-58 (S.D.N.Y. 1992) (establishing three basic factors for determining whether to permit such fees in bankruptcy: whether (1) relationship of parties who negotiated break-up fee is tainted by self-dealing or manipulation; (2) whether fee hampers, rather than encourages, bidding; and (3) amount of fee is unreasonable relative to purchase price), appeal dismissed, 3 F.3d 49 (2d Cir. 1993).

The Bidding Procedures and Bid Protections are fair and reasonable, particularly in view of the efforts to be made by the Stalking Horse Bidder in teeing up a sale or other transaction and the risk to the Stalking Horse Bidder of being used as a stalking horse. Indeed, the maximum amount of the Expense Reimbursement Amount of $300,000 constitutes a fair and reasonable cost of sale and is customary for similar transactions of this type in the bankruptcy context. The sale of the Debtor's assets pursuant to the APA would bring approximately $2 million into the bankruptcy estate. If, however, the Stalking Horse Bidder is outbid at the Solicitation Conference, the sale of assets to the Winning Bidder would bring an even larger sum into the estate. In such a scenario, the Stalking Horse Bidder should be compensated for the expenses it incurred in helping to establish a process which led to the deposit of such a substantial sum into the estate. In addition, in such a scenario, the Expense Reimbursement Amount would come out of additional value offered by the Winning Bid relative to the APA and the Expense Reimbursement Amount would not decrease creditors' recovery relative to what they would have received under the APA.

The APA also requires the payment of the Expense Reimbursement Amount to the Stalking Horse Bidder if the APA is terminated for other reasons. In particular, the Stalking Horse Bidder has the option to terminate the APA for the following reasons, among others: (i) if the Bidding Procedures Order is not entered within 45 days of execution of the APA or closing of the sale transaction has not occurred within 60 days of entry of the Bidding Procedures Order, (ii) if closing of the sale transaction has not occurred within 90 days of signing of the APA, except under certain circumstances where the Stalking Horse Bidder has breached the APA, not satisfied conditions precedent to closing, or failed to secured financing for the transaction, (iii) if the sale transaction is determined to be illegal or violative of an order of a governmental body, (iv) if Debtor files a stand-alone chapter plan or if Debtor files a chapter 11 plan involving the sale of a material portion of the Purchased Assets to another party, (v) if the order approving the APA transaction is modified in a material way without the Stalking Horse Bidder's consent, (vi) if this bankruptcy case is converted to chapter 7, a trustee or examiner is appointed, or relief from stay is granted with respect to a portion of the Purchased Assets, (vii) if the Debtor's exclusive period to file and/or solicit acceptance of a plan of reorganization expires or is terminated, and (viii) the order approving the APA sale transaction is appealed, the closing of the sale is stayed, and such stay is not dismissed, reversed or vacated within 30 days of the earlier of the date in which a motion seeking the stay pending appeal was filed or the date of the Bankruptcy Court's stay order. See APA §§ 4.4 and 4.7.

The Debtor submits that reimbursing the Stalking Horse Bidder for reasonable expenses of up to $300,000 is appropriate in this case given the fact that the Stalking Horse Bidder's offer should generate approximately $2 million in proceeds for the Debtor's estate. If the Debtor had not agreed to reimburse the Stalking Horse Bidder's reasonable expenses as it seeks higher and better proposals, it is likely that the Stalking Horse Bidder would not have agreed to serve in the stalking horse capacity. The Bidding Procedures and the Bid Protections will have thus induced a bid that otherwise would not have been made and without which bidding would be limited. Similarly, the offer, once made, will provide a minimum bid on which other bidders can rely, thereby increasing the likelihood that the Debtor will be able to maximize value. Finally, the mere existence of the Bidding Procedures and the Bid Protections permits the Debtor to insist that competing bids be materially higher or otherwise better than the agreement with the Stalking Horse Bidder, a clear benefit to the Debtor, their estates, their creditors, and all other parties in interest.

B. Sale Pursuant to Section 363(b)(1)

Section 363(b)(1) of the Bankruptcy Code provides: "[t]he Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . ." Section 105(a) of the Bankruptcy Code provides in relevant part: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

A sale of substantially all of a debtor's assets should be authorized pursuant to Bankruptcy Code § 363 if an articulated business justification exists for doing so. See, e.g., Fulton State Bank v. Schipper, 933 F.2d 513, 515 (7th Cir. 1991); Committee of Equity Sec. Holders v. Lionel Corp., (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983).

Once the Debtor articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" In re S.N.A. Nut Company, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995); In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992); In re Johns-Manville Corp., 60

B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a Debtor's management decisions.").

Indeed, when applying the "business judgment" rule, courts show great deference to the debtor's decision-making. See Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 316 (Bankr. D. Utah 1981). Thus, this Court should grant the relief requested in this Motion if the Debtor demonstrate a sound business justification therefor. See Schipper, 933 F.2d at 515; Lionel Corp., 722 F.2d at 1071. In addition to showing a business justification, for a sale under § 363 to be approved, a debtor must show that (a) the price is fair and reasonable, (b) the purchaser acted in good faith and (c) adequate notice was provided. In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991).

The Debtor entered into the APA only after seriously exploring all other alternatives and after expending significant time, effort, and resources in trying to find the highest or best offer for the business, including through a restructuring transaction. Further, the APA is a product of extensive arm's-length negotiations between the Stalking Horse Bidder and the Debtor. These negotiations have involved substantial time and energy by the parties and their professionals, and the APA reflects give-and-take and compromises by both sides. Under the circumstances, the Debtor submit that APA and the ultimate sale, if Stalking Horse Bidder is the Winning Bidder, will be the result of good-faith, arm's-length negotiations.

The Debtor further submit that any doubt as to the reasonableness of the purchase price should be dispelled by the fact that the sale or other transaction is subject to an auction process, thereby enhancing the Debtor' ability to receive the highest or best value for their assets or the opportunity to participate in a restructuring transaction. Consequently, the fairness and reasonableness of the consideration to be received by the Debtor will be subject to a "market check" and auction process—the best means for establishing whether a fair and reasonable price is being paid.

The final element for the approval of a sale under Bankruptcy Code § 363 is the requirement that interested parties receive adequate notice. Notice of the bidding process will be given as described above. Such notice is reasonably calculated to provide timely and adequate notice to the Debtor' major creditor constituencies, those parties most interested in these cases, and those parties potentially interested in bidding. Furthermore, the Debtor will comply with any additional notice required by the Court in the Bidding Procedures Order. The sale will therefore satisfy all of the requisite conditions for authorization under Bankruptcy Code § 363(b).

C. Sale Free and Clear Pursuant to Section 363(f)

Section 363(f) of the Bankruptcy Code provides that the trustee may sell property under subsection (b) or (c) of Section 363 of the Bankruptcy Code free and clear of any interest in such property of an entity other than the estate, only if —

> 1 applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> 2 such entity consents;
>
> 3 such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> 4 such interest is in bona fide dispute; or
>
> 5 such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

To the best of the Debtor's knowledge, no person or entity holds an interest in any of the Acquired Assets, other than NetApp Inc. which recorded a UCC-1 financing statement with respect to certain leased computer equipment. In the highly unlikely event that a person or entity does hold an interest in some or all of the Acquired Assets, based on the proposed purchase price under the APA, the Debtor believes that the ultimate purchase price, if the Accepted Offer is a sale transaction, will exceed the aggregate value of any interests in the Acquired Assets. Even if each holder of an interest in the Acquired Assets is not satisfied in full, each such holder will be adequately protected by attachment of the interest to the net proceeds of any sale, subject to any claims and defenses the Debtor may possess with respect thereto. Accordingly, the Debtor requests that if the Accepted Offer is a sale transaction, that the Acquired Assets be transferred to the Winning Bidder free and clear of all interests, with such interests to attach to the proceeds of the sale of the Acquired Assets.

D. Good Faith Pursuant to Section 363(m)

Section 363(m) of the Bankruptcy Code provides that the reversal or modification on appeal of an authorization under subsection (b) or (c) of § 363 of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. 11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith", the Seventh Circuit in In the Matter of Andy Frain Services, Inc., 798 F.2d 1113 (7th Cir. 1986), held that:

> The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

798 F.2d at 1125. If the Accepted Offer is a sale transaction, the Debtor will present evidence at the Approval Hearing in the form of a declarations of the Debtor and the Winning Bidder, that the proposed sale is the product of an intensely negotiated, arm's-length transaction, in which the Winning Bidder and the Debtor acted at all times in good faith. The Debtor, therefore, requests that if the Accepted Offer is a sale, the Court make a finding at the Approval Hearing that the Winning Bidder has purchased the Acquired Assets and assumed the Assumed Contracts in good faith within the meaning of Section 363(m) of the Bankruptcy Code.

E. Authorization of Assumption and Assignment of Executory Contracts and Unexpired Leases

The Debtor requests approval under Bankruptcy Code § 365 of the Debtor's assumption and, if applicable, the assignment of the Assumed Contracts to the Winning Bidder. Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

> The trustee may assign an executory contract or unexpired lease of the debtor only if —
>
> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such

> contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under § 365(a), a debtor "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . .;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given a "practical, pragmatic construction." See, e.g., EBG Midtown South Corp. v. McLaren/Hart Env. Engineering Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992); In re Prime Motor Inns Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

Adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding).

The Debtor will present facts at the Approval Hearing to show the financial credibility, the willingness, and the ability of the Winning Bidder to perform under the Assumed Contracts. The Approval Hearing thus will provide the Court and other interested parties the opportunity to evaluate the ability of the Winning Bidder to provide adequate assurance of future performance under the Assumed Contracts, as required under 11 U.S.C. § 365(b)(1)(C). Further, as set forth above, the Debtor will give notice to all parties to the Assumed Contracts what the Debtor believe are the Cure Amounts. Accordingly, the Court should authorize the Debtor to assume and, if applicable, assign the Assumed Contracts to the Winning Bidder.

WHEREFORE, the Debtor respectfully requests that the Court enter the Bidding Procedures Order and Approval Order and grant such other and further relief as is just and proper.

Dated: January 19, 2011

Respectfully Submitted,
DLA PIPER LLP (US)

By _/s/ Kurt Ramlo___
KURT RAMLO
Proposed Attorneys for NexPrise, Inc.